

Appn. Serial No. 10/046,061

Response to Office Action Mailed: June 2, 2005

REMARKS

In the Office action, the Examiner noted that claims 1-27 are pending in the application; that claims 5-11, 13, and 15-19 are rejected; and an objection to claim 8. Claims 1-4, 12, 14, and 20-27 are withdrawn from consideration. By this response, claims 8 and 13 are amended and claims 5-7, 9-11, and 15-19 continue unamended. In view of the following discussion, the Applicant submits that none of the claims now pending in the application is indefinite or obvious under the respective provisions of 35 U.S.C. §112 and §103(a). At the outset the Applicant incorporates all of the arguments presented in the Response filed on April 15, 2005 into this instant Response and to address the Office action mailed June 2, 2005.

Objections to the Claims

The Examiner objected to claim 8 for containing informalities. The Applicant has amended claim 8 as indicated above. The amendments are fully supported by the specification, as originally filed, and add no new matter. As such, the Applicant requests reconsideration and withdrawal of the objections to claim 8.

Rejections Under 35 U.S.C. §112

The Examiner rejected claims 13 under 35 U.S.C. §112, second paragraph. The Applicant has amended claim 13 as indicated above. The amendments are fully supported by the specification, as originally filed, and add no new matter. As such, the Applicant requests reconsideration and withdrawal of the 35 U.S.C. §112, second paragraph rejection of claim 13.

The Rejections Under 35 USC §103

The Examiner rejected claims 5-11, 13, and 15-19 under 35 U.S.C. §103(a) as being unpatentable over Time Life Books Recipes: the Cooking of India, page 43 in view of Powell, Brotsky and British Patent 18, 345. In addition, the Examiner indicated that a previously filed 132 Declaration was unpersuasive. The Applicants respectfully traverse the rejection.

In response the Examiner's comments in paragraph 7 of the Office Action of June 2, 2005, where the Examiner stated that: "[t]here is no comparison between the applicant's invention and the closest prior art reference, viz the literature article", the

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Applicant has submitted herein a new 132 Declaration of John Bonnes dated August 19, 2005. Mr. Bonnes conducted tests which compared closest prior art reference, namely, The Cooking of India reference, with the subject matter of the instant application. Mr. Bonnes documents the results of those tests in the Declaration. Those results clearly show a significant difference in the bactericide/contaminants test results produced by The Cooking of India, when compared to the bactericide/contaminants test results of Applicant's invention.

For example, on page 1 of the test results, The Cooking of India produced an average (over 5 test samples) of a 44.1% drop in *Listeria*, however, there is an average of a 97.5% drop in *Listeria* using the Applicant's invention. As apparent from the Declaration, the Applicant has conducted the tests for numerous types of bacteria/contaminants. For brevity, the Applicant will not list all of the tests conducted and requests that the Examiner review the newly submitted 132 Declaration for those bacteria/contaminants tested and the results thereof. The Applicant submits that these tests are proof of secondary considerations.

For example, there are unexpected results in using this invention and there is a much broader spectrum of microbiological control properties stemming from the current invention. The current invention provides several factors to produce an uninhabitable environment for bacteria with the combination of a low pH and the absorption of the much needed oxygen. The results of using this invention greatly surpasses the use of any of the prior art methods. In addition, there is a long felt but unsatisfied need for treatment of food to extend self life without compromising the taste, with such elements which have been long available. Further, Examiner's conclusion of obviousness may be based on improper hindsight reasoning.

Respectfully there is a lack of suggestion in the prior art of the desirability of combining references: The Cooking of India in view of Powell, Brotsky and British patent 18,345. In addition, even if Powell, Brotsky, and British Patent 18345 were combined there is nothing which would suggest that this combination would produce the results demonstrated by the Applicant's invention.

Lastly, since this invention deals with food, taste is a very important consideration. The use of the prior art in order to obtain bacteria control results anywhere

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near the current invention will necessarily be in such concentrations which interfere with a person's enjoyment of that particular food. The Applicant requests reconsideration and withdrawal of the obviousness rejection of the Claims.


Conclusion

Thus, Applicant submits that none of the claims presently in the application are indefinite or obvious under the provisions of 35 U.S.C. §112 and §103(a). Consequently, the Applicant believes that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Alfred M. Walker, Esq. at (631) 361-8737 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Dated: October 3, 2005


Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited by fax to the Commissioner for Patents at 571-273-8300 on the date indicated below.

Date: Monday, October 3, 2005


Alfred M. Walker